U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAROU K. SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

Docket No. 02-522; Submitted on the Record;
Issued November 3, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he has more than a 40 percent permanent impairment of his right upper extremity for which he received schedule awards.

On May 3, 1996 appellant, a 45-year-old mailhandler, filed a Form CA-2, claim for benefits based on occupational disease, claiming that he sustained carpal tunnel syndrome in his right hand causally related to factors of his federal employment. The Office of Workers' Compensation Programs accepted the claim for right carpal tunnel syndrome; it subsequently expanded the claim to right cubital tunnel syndrome and right shoulder impingement. Appellant underwent surgery for right carpal tunnel release on September 17, 1996.

On July 21, 1997 Dr. Robert T. Pero, Board-certified in preventive medicine, found that appellant had a 30 percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides for the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (4th ed. 1993). Dr. Pero derived this impairment rating from grip strength testing.

On September 3, 1997 the Office granted appellant a schedule award for a 30 percent permanent impairment of the right upper extremity for the period June 26, 1997 to April 12, 1999, for a total of 93.60 weeks of compensation.

Appellant underwent surgery to correct bilateral epicondylitis of the shoulders, right shoulder myofascial pain and right shoulder impingement on February 1, 2000 and additional surgery to correct right shoulder impingement on December 4, 2000. These surgical procedures included arthroplasty of appellant's right distal clavicle.

In an evaluation dated June 5, 2001, Dr. Pero found that appellant had a 23 percent permanent impairment of the right upper extremity pursuant to the fifth edition of the A.M.A.,

Guides. Dr. Pero stated that this rating was derived from both diagnosis-specific impairment and range of motion impairment. He stated:

> "[Appellant] underwent an acromioplasty as part of the February 1, 2001 surgery of the right shoulder. This represents a resection arthroplasty, at the region of the distal clavicle, which corresponds to ten percent upper extremity impairment, according to [T]able 16-27, page 506 [of the A.M.A., *Guides*.]"

Dr. Pero derived the range of motion impairment of the right shoulder by calculating flexion of 162 degrees, for a 1 percent impairment of the right upper extremity pursuant to Figure 16-40 at page 476; extension of, 37 degrees, for a 1 percent impairment of the right upper extremity pursuant to Figure 16-40 at page 476; abduction of 146 degrees, for a 1 percent impairment of the right upper extremity pursuant to Figure 16-43 at page 477; and by external rotation of 42 degrees, for a 1 percent impairment of the right upper extremity pursuant to Figure 16-46 at page 479. These findings totaled four percent impairment for decreased range of motion of the right upper extremity. Dr. Pero further found that this 4 percent impairment based on loss of range of motion, combined with the 10 percent, diagnosis-specific impairment, totaled 14 percent upper extremity impairment according to the Combined Values Table.

With regard to the impairment from appellant's right elbow, Dr. Pero utilized grip strength impairment in the right hand and wrist. He stated that "[appellant's] right grip strength measurement was measured at an average of 74.33 pounds/33 kilograms at the time of the functional capacity evaluation. The expected value, according to hand dominance/age/gender is 45.9, according to Table 16-32." Dr. Pero calculated the strength index at 45.9 minus 33.8, which equated to 12.1/45.9, or 264, which totaled 26.4 percent. He found that this strength index of 26.4 percent corresponded to a 10 percent upper extremity impairment, pursuant to Table 16-34, page at 509. Dr. Pero stated:

> "Combination of the 14 percent upper extremity impairment for the right shoulder to the 10 percent upper extremity impairment for the right elbow results in a total of 23 percent upper extremity impairment. This value of 23 percent upper extremity impairment corresponds to 14 percent whole person impairment, according to Table 16-3 page 439."

On July 9, 2001 appellant filed a claim for a schedule award based on a partial loss of use of his right upper extremity. In a memorandum/impairment evaluation dated July 29, 2001, Dr. Daniel D. Zimmerman, a Board-certified internist and Office medical consultant reviewed Dr. Pero's findings and conclusions and determined that appellant had 10 percent impairment based on loss of use of his right upper extremity in addition to the 30 percent impairment for which he earlier received a schedule award. Dr. Zimmerman stated:

> "The rating suggested for the residuals of the surgically treated epicondylitis of 10 percent based on the strength index premise is correct enough based on [the A.M.A., *Guides*], but it is redundant in that [appellant's] scheduled award of 30 percent processed from June 27, 1997 through April 12, 1999 was solely a rating offered because of volitionally demonstrated weakness said to be a consequence of ... carpal tunnel syndrome.

> "In essence, the weakness rating then offered was 30 percent of the whole arm, maybe or maybe not, attributable to weakness from a carpal tunnel syndrome which in any event percent ... has dramatically lessened in that arm due to residuals of surgically treated shoulder, elbow and wrist conditions. The strength index assessment process permits only a 10 percent rating of the entire right upper extremity.
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> "Thus, using the A.M.A., *Guides*, the rating for the residuals of the right shoulder condition must be processed and the strength index rating for weakness already considered for the entire arm in 1997 at 30 percent cannot be processed as, then, weakness would be at least 'double weighted.'
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> "The current increase in the right upper extremity scheduled award is found by using the Combined Value Chart, [pages] 604-606, to combine the 30 percent from 1997 with the 14 percent for the right shoulder condition as discussed in the June 5, 2001 report. 30 percent combined with 14 percent yields 40 percent. The current scheduled award is found by subtracting 30 percent from the Combined Value Chart derived rating of 40 percent, for a 10 percent impairment the right upper extremity…. The amended schedule award is 10 percent of the right extremity."

On August 17, 2001 the Office granted appellant a schedule award for an additional 10 percent impairment to his right upper extremity for the period June 5, 2001 to January 9, 2002, for a total of 31.20 weeks of compensation.

The Board finds that appellant has not established that he has more than a 40 percent permanent impairment of his right upper extremity for which he received schedule awards.

The schedule award provisions of the Federal Employees' Compensation Act[1] set forth the number of weeks of compensation to be paid for permanent loss or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[2] However, the Act does not specify the manner in which the percentage of loss of use of a member is to be determined. For consistent results and to insure equal justice under the law to all claimants, the Office has adopted the fifth edition of the A.M.A., *Guides* as the standard to be used for evaluating schedule losses.[3]

In the present case, the Office granted appellant a schedule award on September 3, 1997 for a 30 percent permanent impairment of his right upper extremity. The award was based on limitations found upon loss of grip strength which was performed by Dr. Pero, an attending physician, Board-certified in preventive medicine.[4] Appellant was reevaluated by Dr. Pero in

[1] 5 U.S.C. §§ 8101-8193*; see* 5 U.S.C. § 8107(c).

[2] 5 U.S.C. § 8107(c)(19).

[3] 20 C.F.R. §10.404(a).

[4] *See* A.M.A., *Guides* 508-11 for a description of the performance of grip strength testing.

June 2001, at which time he found that appellant had a 10 percent impairment due to arthroplasty of his right clavicle[5] and 4 percent impairment rating based on loss of range of motion of his right shoulder.[6] Dr. Pero used the Combined Values Chart to combine the 10 percent impairment rating with the 4 percent impairment rating in order to determine that appellant had a 14 percent impairment rating based on surgery and limited range of motion.[7] Dr. Pero also found that the grip strength testing performed in June 2001, warranted an impairment rating of 10 percent. He used the Combined Values Chart to combine the 14 percent rating (based on surgery and limited range of motion) with the 10 percent impairment rating (based on weakness upon grip strength testing) in order to determine that appellant had a 23 percent total impairment of his right upper extremity.

In his July 29, 2001 calculations, Dr. Zimmerman adopted Dr. Pero's rationale with respect to the 14 percent impairment rating based on surgery and limited range of motion. He then determined that it was more appropriate to use the 30 percent impairment rating derived from Dr. Pero's 1997 grip strength testing than to use the 10 percent impairment rating derived from Dr. Pero's 2001 testing. He used the Combined Values Chart to combine the 14 percent value with the 30 percent value to determine that appellant had a 40 percent total impairment of his right upper extremity. On August 17, 2001 the Office granted appellant a schedule award for an additional 10 percent permanent impairment of his right upper extremity in order to supplement the schedule award he received on September 3, 1997 for a 30 percent permanent impairment of his right upper extremity.

As noted above, appellant has been awarded schedule awards for a 40 percent total impairment of his right upper extremity. The Board finds that the medical evidence of record does not establish that appellant has greater than 40 percent impairment of his right upper extremity. Therefore, appellant has not established that he is entitled to schedule award compensation for a greater impairment of his right upper extremity. The June 5, 2001 evaluation of Dr. Pero, in conjunction with the July 29, 2001 calculation of the Dr. Zimmerman, could be interpreted to show that appellant has a 14 percent total impairment of his right upper extremity based on the 10 percent rating due to the arthroplasty combined with the 4 percent rating due to the limited range of motion.[8] However, Dr. Pero's impairment rating of 10 percent for weakness upon grip strength testing and Dr. Zimmerman's rating of 30 percent for weakness upon grip strength testing would not be appropriate. The A.M.A., *Guides* specifically provides that strength deficits, as measured by grip testing, should only rarely be included in the calculation of

[5] *Id*. at 506, Table 6-27.

[6] *Id*. at 476-79, Figures 16-40, 16-43 and 16-46. Dr. Pero determined that appellant had a 1 percent impairment based on 162 degrees of right shoulder flexion; 1 percent impairment based on 37 degrees of extension; 1 percent impairment based on 146 degrees of abduction; and 1 percent impairment based on 42 degrees of external rotation.

[7] *Id*. at 604-06, Combined Values Chart.

[8] *See supra* note 5 through 7 and accompanying text for an identification of the relevant standards of the A.M.A., *Guides*. It should be noted that the impairment rating based on surgery would only be combined with the impairment rating based on limited motion if it could be shown that the two ratings would not create a duplication of ratings; *see id*. at 498-99, section 16.7.

an upper extremity impairment and the medical evidence does not show that the physicians explained why such a method for rotary impairment was appropriate in this case.[9]

The Board finds that the evidence of record does not establish that appellant has more than a 40 percent impairment of his right upper extremity for which he received schedule awards.

The decision of the Office of Workers' Compensation Programs dated August 17, 2001 is affirmed.

Dated, Washington, DC
November 3, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] The A.M.A., *Guides* provides that loss of strength may be rated separately if such a deficit has not been considered adequately by other rating methods. An example of this situation would be loss of strength caused by a severe muscle tear that healed leaving "a palpable muscle defect." If the rating physician determines that loss of strength should be rated separately in an extremity that presents other impairments, "the impairment due to loss of strength *could be combined* with the other impairments, *only* if based on unrelated etiologic or pathomechanical causes. *Otherwise, the impairment ratings based on objective anatomic findings take precedence.*" (Emphasis in original.) The A.M.A., *Guides* further provides that decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts that prevent effective application of maximum force. A.M.A., *Guides* 508, Section 16.8a.